

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHAUNCEY E. VANN,

Defendant-Appellant.

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UNPUBLISHED  
February 10, 2004

No. 243033  
Macomb Circuit Court  
LC No. 2002-000062-FH

Before: Owens, P.J., and Schuette and Borrello, JJ.

MEMORANDUM.

Defendant was convicted by a jury of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v). The sentencing guidelines range was 0 to 17 months. The trial court sentenced defendant to 17 to 48 months' imprisonment. Defendant appeals his sentence only and contends that the trial court failed to provide substantial and compelling reasons that are objective and verifiable for the departure from the statutory requirement that an intermediate sanction be imposed in the present circumstances.

MCL 769.34(4)(a) provides as follows:

If the upper limit of the recommended minimum sentence range for a defendant determined under the sentencing guidelines set forth in chapter XVII is 18 months or less, the court shall impose an intermediate sanction unless the court states on the record a substantial and compelling reason to sentence the individual to the jurisdiction of the department of corrections. An intermediate sanction may include a jail term that does not exceed the upper limit of the recommended minimum sentence range or 12 months, whichever is less.

MCL 769.31(b) provides the definition of "intermediate sanction": "Intermediate sanction' means probation or any sanction, other than imprisonment in a state prison or state reformatory, that may lawfully be imposed."

Defendant's minimum sentence was more than twelve months. Therefore, the trial court was required to state substantial and compelling reasons for not imposing an intermediate sanction.

Plaintiff concedes, and we agree, that the trial court failed to articulate any substantial and compelling reasons for its departure from the statutory requirement of intermediate sanction. However, we decline defendant's urging of a full resentencing. See *People v Triplett*, 432 Mich 568, 573; 442 NW2d 622 (1989). Instead we remand to the trial court to articulate substantial and compelling reasons for the departure. But if the court determines that no substantial and compelling reasons for the departure exist, it may resentence defendant in accordance with MCL 769.34(4)(a). We also decline defendants' request for remand to a different judge because none of the factors that this Court articulated in *People v Evans*, 156 Mich App 68, 72; 401 NW2d 312 (1986) regarding such a request are present here.

We affirm defendant's conviction but remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens

/s/ Bill Schuette

/s/ Stephen L. Borrello